

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

OCCIDENTAL CHEMICAL CORPORATION,)	Hon. Madeline Cox Arleo
)	
Plaintiff,)	Hon. Joseph A. Dickson
)	
vs.)	Civil Action 2:18-cv-11273-MCA-JAD
)	
21ST CENTURY FOX AMERICA, INC., <i>et al.</i> ,)	JOINT STATUS REPORT
)	
Defendants.)	

In advance of the May 21, 2019 telephonic status conference, the parties submit this Joint Status Report to inform the Court of the parties' progress regarding discovery tasks ordered at the January 28, 2019 status conference and in the Second Pretrial Scheduling Order (ECF No. 550). Plaintiff Occidental Chemical Corporation ("OxyChem") and Defendants have also agreed that each side may file a separate submission addressing issues in dispute and each sides' respective positions.

Site Sampling

OxyChem's Sampling Requests (Second Pretrial Scheduling Order (ECF No. 550) at ¶ 1: On February 13, 2019, OxyChem initiated the process of entering and sampling 11 upland site by serving 21 subpoenas (on non-party property owners) and four requests for permission to enter upland sites (on Defendants). Defendants and non-parties responded in writing with requests for more information and/or objections on various grounds.

Pursuant to the Joint Sampling Protocol (ECF No. 585), on May 9, 2019, OxyChem's consultant conducted a walk-through inspection at the upland site owned by Defendant Ashland LLC. OxyChem is in the process of preparing a proposed Work Plan to sample at that site. Ashland submitted numerous objections and 56 questions regarding the sampling, which OxyChem has preliminarily addressed and will more fully address in the proposed Work Plan and through the objection procedure set forth in the Joint Sampling Plan.

For the other sites, OxyChem is assessing information received in response to its subpoenas and requests and preparing responses to the requests for more information and objections.

OxyChem's Production of 2018 Regulatory Sampling Data (Id. at ¶ 2): On April 1, 2019, OxyChem produced validated sampling submitted to EPA from (1) the Pre-Design Investigation sediment and water column sampling performed pursuant to the Administrative Settlement Agreement and Order on Consent for Remedial Design for Operable Unit Two of the Diamond Alkali Superfund Site (Region 2, CERCLA Docket No. 02-2016-2021) (the "2016 ASAOC") and (2) the 2018 groundwater sampling of Operable Unit One ("OU-1"). On April 12, 2019, OxyChem produced location coordinates for the Pre-Design Investigation Sampling data.

OxyChem has not produced certain November 2018 sampling data collected for the Treatability Study Evaluation Report (“TSER”) (prepared under the 2016 ASAO). The validation process for the November 2018 TSER sampling data is not yet complete.

Defendants’ Sampling Requests (Id. at ¶ 3): On May 1, 2019, the Small Parties Group (the “SPG”) served OxyChem with (1) a preliminary Request for Permission to Enter an Upland Site Pursuant to Fed. R. Civ. Proc. 34 and (2) an OU-1 and Lower Passaic River Sampling Plan. The SPG’s Sampling Plan proposes: (i) drilling seven monitoring wells through the engineered cap at OU-1 (80-120 Lister Avenue) between the five existing wells mandated and overseen by EPA; and (ii) taking sediment cores from the Phase I removal area in the Lower Passaic River. The SPG reserved its right to identify additional areas to sample until 30 days after OxyChem provides all of its 2018 sampling data. Defendant Givaudan Fragrances Corporation also submitted a sampling request on May 1, 2019 and has reserved its rights related to same. On May 13, 2019, OxyChem sent a letter to the SPG and to Givaudan Fragrances Corporation objecting to the sampling on a number of grounds and notifying the SPG of EPA’s request for notice and an opportunity to be heard prior to sampling at any site where EPA is overseeing work, in particular at OU-1.

Document Requests

OxyChem’s First Request for Production of Documents to Defendants (Id. at ¶¶ 6(i), 7): Defendants served, and the parties met and conferred about, Defendants’ preliminary omnibus objections to OxyChem’s First Request for Production of Documents. Defendants then each served written responses and individual objections. As addressed below, the production of paper documents responsive to OxyChem’s requests began on April 19, 2019 and is proceeding on a rolling basis.

Defendants’ First Joint Request for Production of Documents to OxyChem (Id. at ¶ 8(i)): On March 5, 2019, Defendants served their First Joint Request for Production of Documents. OxyChem served responses and objections on April 4, 2019, and the parties exchanged letters and attempted to resolve OxyChem’s objections in a meet and confer.

There are certain issues that remain in dispute after the parties met and conferred. This includes a dispute over whether OxyChem must produce non-validated/raw sampling data and supporting documentation, including field notes, chain of custody, and quality-assurance/quality control reports. These issues will be addressed in more detail in the parties’ separate submissions. The parties anticipate that these issues will need to be resolved through motion practice and the Court’s intervention.

Individual Defendants’ Requests for Production of Documents: At least 35 Defendants served individual document requests on OxyChem. OxyChem served responses and objections that were consistent with its responses and objections to Defendants’ joint requests for production.

SPG’s Subpoenas: The SPG served a series of subpoenas on third-party entities to obtain (1) Lister Avenue and Passaic River related documents and (2) pleadings, trial exhibits, and discovery materials from prior litigations related, in part, to Lister Avenue and/or the Passaic River. The purpose of these subpoenas was to obtain documents that OxyChem either indicated it

did not have within its possession, custody, or control or was unwilling to produce based on relevance objections.

The SPG served a subpoena on the Maxus Liquidating Trust (the “Trust”), requesting former Tierra Solutions, Inc. (“Tierra”) and Maxus Energy Corporation (“Maxus”) documents, including access to a database where Tierra stored environmental data pertaining to Lister Avenue (the “EQuIS database”). After the SPG served subpoenas, OxyChem informed Defendants it would provide access to the EQuIS database. The SPG and the Trust are negotiating the production of the remaining requested documents from the Trust.

The SPG served a subpoena on Glenn Springs Holdings (OxyChem’s sister corporation), requesting substantially the same categories of documents Defendants sought from OxyChem as well as documents transferred from the Trust to Glenn Spring Holdings on behalf of OxyChem as part of the Tierra/Maxus Site Transition Agreement. OxyChem clarified it was producing documents from Glenn Springs Holdings in response to Defendants’ discovery requests and the SPG has agreed to hold its subpoena to Glenn Spring Holdings in abeyance until they receive and review the materials OxyChem produces.

The SPG served a subpoena on OxyChem’s consulting expert, The Intelligence Group (“TIG”), to obtain documents underlying OxyChem’s alleged claims for PRP search costs and the factual documents TIG compiled. On May 2, 2019, OxyChem sent the SPG a letter offering to produce (1) TIG’s redacted invoices and (2) the underlying factual information (including both hard copy and electronic documents) that was collected or maintained by TIG regarding PRPs at the Diamond Alkali Superfund Site if Defendants agreed that such production did not constitute a waiver of attorney-client or work product privilege.

The SPG served 16 subpoenas on law firms that represented OxyChem, OxyChem’s predecessors and indemnitors, and other entities involved in previous litigations relating, in part, to the Lister Avenue Site and contamination of the Diamond Alkali Superfund Site expressly seeking only non-privileged documents. The SPG is coordinating with these law firms to attempt to compile complete sets of discovery materials, trial exhibits, trial and deposition testimony, and document productions from those litigations.

Production of Documents

Reproduction of Spill Act Productions (Id. at ¶ 8(ii)): On March 15, 2019, OxyChem re-produced 7,210,884 pages of documents from Spill Act productions, including: (1) Third-Party Defendants’ Spill Act productions (640,018 pages); (2) OxyChem’s Spill Act productions (204,864 pages); and (3) Maxus and Tierra’s Spill Act productions (6,366,002 pages).

Rolling Production of Paper Documents (Id. at ¶ 9(i)): OxyChem has electronically produced 103,888 pages of paper documents collected from Tierra’s New Jersey Office (Tierra Office Documents) and documents stored at 80-120 Lister Avenue (Lister Site Documents). OxyChem anticipates finishing its review and production of these hard-copy document sets by May 24, 2019.

Forty-four Defendants have, collectively, electronically produced approximately 1,088,238 pages of paper documents. At least 30 Defendants anticipate making additional productions of hard-copy documents.

Approximately 16 Defendants have informed OxyChem that they would make responsive documents available for review and inspection. OxyChem has reached out to these parties to begin the process of arranging for OxyChem to access and review those documents.

Numerous Defendants referenced their Spill Act productions as their first production while they search for additional responsive documents. In addition, certain Defendants have indicated that their only responsive, non-privileged documents are in the Spill Act litigation productions, and thus they will not be producing additional hard copy documents in this case.

Tierra/Maxus Iron Mountain Documents (Id. at ¶¶ 6(ii), 8(iii)): On February 15, 2019, OxyChem provided Defendants an inventory of thousands of unique boxes Maxus and Tierra stored at Iron Mountain that pertain to the Diamond Alkali Superfund Site. Defendants made an initial request to review 1,902 boxes of those boxes, subject to Defendants' right to identify additional boxes for review as the review process proceeded. A review of 1,248 boxes is scheduled to begin on May 20, 2019. Upon completion of this initial review, Defendants will determine whether to review additional boxes.

OxyChem's Re-Review of Tierra/Maxus Spill Act Litigation Privilege Log (Id. at ¶ 9(ii)): In the Spill Act litigation, Maxus and Tierra produced a privilege log containing approximately 153,000 entries (the "DBR Log"). In connection with the Maxus/Tierra bankruptcy, OxyChem received many of the documents listed on the DBR Log. OxyChem is in the process of evaluating Maxus and Tierra's privilege assertions, and to date has produced (or identified as already produced as part of the Spill Act litigation productions) approximately 70,000 of the 153,000 documents listed on the DBR Log. OxyChem will continue to make rolling productions of documents removed from the DBR Log and expects to complete its review in June 2019.

Interrogatories

Standardized Interrogatories (Id. at ¶¶ 11-15): The parties developed and served standardized interrogatories on all parties. The parties agreed to serve answers to standardized interrogatories by July 1, 2019.

Individual Interrogatories (Id. at ¶ 16): Defendant Chargeurs, Inc. served four individual interrogatories on OxyChem. OxyChem and Defendants may later serve up to five individual interrogatories without leave of the Court if the party has a good faith basis for propounding additional interrogatories that are non-duplicative and otherwise comply with Rule 26(g)(1)(B).

Dated: May 17, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2019, a copy of the parties' **JOINT STATUS REPORT** was electronically served on counsel of record through the ECF filing system.

/s/ Dave Erickson
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